

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLENDA MYLES and U.S. POSTAL SERVICE,
POST OFFICE, Van Nuys, Calif.

*Docket No. 96-1072; Submitted on the Record;
Issued February 3, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that appellant abandoned her right to a hearing.

This case has been on appeal previously.¹ On the prior appeal, the Board found that the Office had failed to properly review the factual statement of appellant submitted prior to its November 12, 1992 decision and remanded the case to the Office for a full review of the factual evidence. In addition to reviewing appellant's factual statement, the Office referred the evidence of record to an Office medical adviser, who negated a causal relationship between appellant's claimed condition and her employment. By decision dated December 6, 1994, the Office denied appellant's claim for an employment-related hemorrhoid condition.

Appellant requested an oral hearing. The Office notified appellant by letter dated June 21, 1995, that an oral hearing had been scheduled for July 25, 1995. On July 19, 1995 the Office received a July 13, 1995 letter, from appellant with evidence of proposed surgery scheduled for July 25, 1995. By letter dated August 8, 1995, the Office advised appellant that her hearing had been canceled and that per her request, "another hearing date will be scheduled for the near future" with notification of that hearing to be provided. By letter dated October 31, 1995, the Office informed appellant that the hearing was rescheduled for Monday, December 11, 1995. Appellant did not appear at the hearing. On December 13, 1995 the Office received a statement from appellant dated December 12, 1995, by which she indicated that she misread the October 31, 1995 notice of hearing to say "December 12, 1995" instead of "December 11, 1995." She noted surprise that a hearing was rescheduled so soon and indicated that after she wrote the incorrect date in her organizer, she promptly filed the notice of the hearing. Appellant recounted a conversation with the Postmaster which took place one hour after she arrived at work on December 12, 1995, pertaining to the scheduled hearing on that date. She stated that he

¹ Docket No. 93-913 (issued May 20, 1994).

and the injury compensation specialist, had spoken about the scheduled hearing and appellant's impression that the hearing was to occur on December 12, 1995. Appellant noted, the Postmaster's statements that the injury compensation specialist assumed appellant had received the same notice which was sent to the injury compensation specialist. Appellant noted, that while she assumed responsibility for the mistake, she wished the Postmaster or the injury compensation specialist had corrected her.

By decision dated January 17, 1996, the Office hearing representative found that appellant's reason for not attending the scheduled hearing on December 11, 1995 did not demonstrate good cause. The Office hearing representative found, therefore, that appellant had abandoned her right to a hearing.

The only Office decision before the Board on this appeal is the Office's January 17, 1996 decision in which it found that appellant had abandoned her right to a hearing. Since more than one year elapsed between the date of the Office's December 6, 1994 decision and the filing of appellant's appeal on February 15, 1996, the Board lacks jurisdiction to review the merits of appellant's claim.²

The Board finds that the Office properly found that appellant abandoned her right to a hearing.

Section 8124(b) of the Federal Employees' Compensation Act³ provides claimants under the Act a right to a hearing if they request a hearing within 30 days of the Office's decision. Under section 10.137 of the applicable regulations,⁴ a scheduled hearing may be postponed upon written request of a claimant, or his representative if the request is received by the Office at least three days prior to the scheduled date, of the hearing and good cause for the postponement is shown. If a claimant fails to appear for a scheduled hearing, the claimant has 10 days after the date of the scheduled hearing to request that another hearing be scheduled. Where good cause for the failure to appear is shown, a second hearing will be scheduled.

While appellant provided "good cause" to reschedule the hearing from a date she was scheduled for surgery to another date, the Office hearing representative found that her misreading did not constitute "good cause" for failure to attend the rescheduled hearing on December 11, 1995. The Board has defined "good cause" as "substantial reason, one that affords a legal excuse. Legally sufficient ground or reason."⁵ The Board finds that under these circumstances, a misreading of a notice of a hearing does not constitute a legally sufficient ground or reason for not attending the scheduled hearing. Accordingly, the Office properly found that appellant abandoned her request for a hearing.

² 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

³ 5 U.S.C. § 8124.

⁴ 20 C.F.R. § 10.137.

⁵ *Eric E. Brickers*, 45 ECAB 686, 689 (1994).

The decision of the Office of Workers' Compensation Programs dated January 17, 1996 is hereby affirmed.

Dated, Washington, D.C.
February 3, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member